

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DONAVAN ROGERS)	
Claimant)	
VS.)	
)	
WAL-MART)	Docket No. 233,965
Respondent)	
AND)	
)	
INSURANCE CO. STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on July 23, 1998.

ISSUES

The ALJ ordered temporary total disability compensation and medical treatment based on the finding that claimant's labor, combined with a preexisting illness, caused claimant to faint and be injured. Respondent requests review of the finding that claimant's accidental injury arose out of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed.

The issue raised on appeal, whether claimant's injury arose out of his employment, is a jurisdictional issue subject to review by the Appeals Board.¹

While working for respondent on January 21, 1998, claimant became dizzy and fell. The Board agrees with the ALJ's conclusion, more probably than not claimant became dizzy, and consequently fell, because of the work activities performed while working with a cold. The Board therefore finds the evidence submitted to date indicates this is a compensable injury.

¹ K.S.A. 1997 Supp. 44-534a; K.S.A. 1997 Supp. 44-551

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict on July 23, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: Thomas R. Lietz, Topeka, KS
H. Wayne Powers, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director